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UNCLAS GUATEMALA 001805

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SUBJECT: CONSTITUTIONAL COURT DECLARES RIOS MONTT ELIGIBLE  
TO RUN FOR PRESIDENT

REF: A. GUATEMALA 1774

1B. GUATEMALA 1760

¶1. (U) By a vote of 4 to 3, the Constitutional Court issued a decision on the evening of July 14 striking down the earlier findings of the Registry of Persons, the Supreme Electoral Tribunal and the Supreme Court (reftels), which had found that former de facto President Efrain Rios Montt was not eligible to be a candidate for President, based on Article 186 of the Constitution. The Constitutional Court decision goes against a 1990 decision by the Constitutional Court and a 1995 decision by the Supreme Court (Note: In 1995 the appeal was not raised to the Constitutional Court. End note), which found that Article 186 of the Constitution did apply to Rios Montt, and that he could not be a candidate.

¶2. (U) The Supreme Electoral Tribunal (TSE) must now register Rios Montt as a candidate. Some civil society leaders and representatives of some opposition political parties have called on the TSE to refuse to register Rios Montt, arguing that they can not be compelled to carry out an instruction that violates the law. Others, however, have said that the Constitution does not allow for an appeal to the Constitutional Court's decision, and say that rebellion by the TSE would only compound the damage to Guatemala's fragile democratic process begun by the questionable decision of the Constitutional Court.

¶3. (U) Reaction to the widely anticipated decision was swift. Rios Montt ran a paid add on TV only minutes after the announcement of the decision in which he heralded the Constitutional Court finding as a victory for the rule of law, and called on FRG members to refrain from celebrating in the streets. Nobel Prize winner Rigoberta Menchu told reporters that the Supreme Court decision had been a "constitutional coup." Private Sector leader Dionisio Gutierrez said the Court's decision had wrought "irreparable damage on Guatemala's democratic institutions." GANA presidential candidate Oscar Berger called on all Guatemalans to defeat Rios Montt once and for all at the ballot box. The Ambassador used the Department's previously cleared press guidance on the morning of July 15: basically, that while the decision is final, we are perplexed by a decision that, in the absence of new facts, runs counter to two previous findings on the issue.

¶4. (SBU) Comment: The decision, while following the procedures outlined in the law, goes against the previous findings of the Court and smacks of partisan manipulation. Opponents of the FRG view the decision as the opening act of electoral fraud in the current election campaign, and are expressing concern that it sets a precedent for the ruling FRG to perpetrate "further fraud" during the elections. OAS election observation chief Paniagua, in town on an initial visit, told the Ambassador (when he phoned to ask that we lobby other donors for financing) that he did not plan to comment until he was better grounded in the situation here.

HAMILTON